EDITOR'S NOTE

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ALEXANDER L. STEVAS,
CLERK

Nos. 85-83

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EVELYN ZERMAN, PETITIONER

v.

ANDREW J. MELTON,Jr., ROBERT M. GARDINER, PETER BYRNE and DEAN WITTER REYNOLDS,INC

RESPONDENTS.

ERNEST R. ZERMAN,PETITIONER

v.

PRUDENTIAL-BACHE, LOREN P. LYON, NEW YORK STOCK EXCHANGE,INC., and IRENE SCHONZIET,

RESPONDENTS.

ERNEST R. ZERMAN,PETITIONER

v.

HARRY A. JACOBS,Jr., H.VIRGIL SHERRILL,and PRUDENTIAL-BACHE,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

EVELYN ZERMAN,ERNEST R. ZERMAN,Pro Se
2049 Ocean Dr.,Apt.1403,
Hallandale, Fl 33009 (305) 456-1404

QUESTIONS PRESENTED

I. Whether 15 U.S.C. 77c(a)(2)-EXEMPTING from the Securities Act any security issued or guaranteed by (1) United States; is now ($1,500,000,000 public debt of U.S.) because of changed economic conditions, UNCONSTITUTIINAL under the 'Equal Protection' clause of 5th Amendment because 77c(a)(2), incorporated in 15 USC 77q, irrationally and unequally deprives investors in U.S.Governmant Bonds, unlike investors in corporate Bonds and Securities the 'Equal Protection of the Securities Acts of 1933 and 1934, which lack of government control resulted in Drysdale, ESM and B.B.&S. Government Securities Co.s' debacles, endangering national financial markets, including runs on Banks, 1929, should not be repeated.

II. Whether it is in conflict with the applicable decisions of Cort v. Ash, 422 U.S. 66 and Merrill Lynch v. Curran, 456

U.S. 353, not to allow investors to maintain private suits for Brokers violation of 15 U.S.C. 77q and for Broker's Margin violations under 15 U.S.C. 78g, on margin loans on U.S.Government Bonds (U.S. debt now $1,500,000,000 and rising at rate of $200,000,000 a year) and should Writ issue and not left unresolved as all three appeals put into question private suits under 15 U.S.C. 77q(a). Below is note[2], Herman & MacLean v. Huddleston, 103 S.Ct. 683 at page 685.

2. Plaintiffs also alleged violations of, *inter alia*, Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a). We have previously reserved decision on whether Section 17(a) affords a private remedy, *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 557, n. 9, 99 S.Ct. 790, 795, n. 9, 58 L.Ed.2d 808 (1979), and we do so once again. Plaintiffs have abandoned their Section 17(a) claim, Brief, at 4, n. 6, and the Court of Appeals did not address the existence of a separate cause of action under Section 17(a). Accordingly, there is no need for us to decide the issue.

III. Whether Florida's legislatures Police Power under 10th Amendment to establish USURY CEILING on MARGIN loans within the State, can be vitiated and circum-

vented by Stock Broker, doing business under license of Florida banking dept., have Florida citizen execute a unilateral adhesion customers agreement executed at Florida branch office at request of broker's Florida employee, that the higher USURY CEILING enacted by New York State legislature, be binding and enforceable against such Florida citizen when he purchases securities on MARGIN at broker's Florida branch with local funds.

IV. Whether there is a private cause of action under 15 U.S.C. 77q, the Anti-fraud Section of 1933 Securities Act, since private suits under 15 U.S.C. 78j(b), the Anti-fraud Section of 1934 Exchange Act, was upheld by Huddleston case, 103 S.Ct. 683, and private suits under 7 U.S.C. 6(b), Anti-fraud Section of Commodity Exchange Act was upheld by Curran, 456 U.S. 353.

V. Where Private suits for MARGIN violations under 15 U.S.C. 78g, existed prior to 1970, whether Congress by ADDING Section

7(f)-P.L.91-508 a law enforcement act-,intended to divest INNOCENT investors of Private suits for Margin violations, which conflicts with Curran and Huddleston.

VI. Where Jury Trial demanded, whether in 2nd Cir.Nos.7373 and 7535, use of arbitration award violated 1st,5th and 7th Amend., and use of Rule 38 for $2500 damage and $11,000 attorney fees awards departed from usual course of judicial proc.

[1] In *Wilko v. Swan*, 346 U. S. 427 (1953), this Court held that a predispute agreement to arbitrate claims that arise under § 12(2) of the Securities Act of 1933, 15 U. S. C. § 77*l*(2), was not enforceable. The Court pointed to language in § 14 of the Securities Act of 1933, 15 U. S. C. § 77n, which declares "void" any "stipulation" waiving compliance with any "provision" of the Securities Act, and held that an agreement to arbitrate amounted to a stipulation waiving the right to seek a judicial remedy, and was therefore void. 346 U. S., at 434–435. Years later, in *Scherk* v. *Alberto Culver Co.*, 417 U. S. 506 (1974), this Court questioned the applicability of *Wilko* to a claim arising under § 10(b) of the Securities Exchange Act of 1934, or under Rule 10b–5, because the provisions of the 1933 and 1934 Acts differ, and because, unlike § 12(2) of the 1933 Act, § 10(b) of the 1934 Act does not expressly give rise to a private cause of action. 417 U. S., at 512–513. The Court did not, however, hold that *Wilko* would not apply in the context of a § 10(b) or Rule 10b–5 claim, and *Wilko* has retained considerable vitality in the lower federal courts. Indeed, numerous District Courts and Courts of Appeals have held that the *Wilko* analysis applies to claims arising under § 10(b) of the Securities Exchange Act of 1934, 15 U. S. C. § 78j(b), and that agreements to arbitrate such claims are therefore unenforceable. See, *e. g.*, *DeLancie* v. *Birr, Wilson & Co.*, 648 F. 2d 1255, 1258–1259 (CA9 1981); *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Moore*, 590 F. 2d 823, 827–829 (CA10 1978); *Weissbuch* v. *Merrill Lynch, Pierce, Fenner & Smith*, 558 F. 2d 831, 833–835 (CA7 1977); *Sibley* v. *Tandy Corp.*, 543 F. 2d 540, 543, and n. 3 (CA5 1976), cert. denied, 434 U. S. 824 (1977); see also Brief for Petitioner 4, n. 3 (citing cases); Brief for Securities Industry Association, Inc., et al. as *Amici Curiae* 10, n. 7 (same).

Dean Witter and *amici* representing the securities industry urge us to resolve the applicability of *Wilko* to claims under § 10(b) and Rule 10b–5.

Dean Witter v. Byrd-No.83-1708(3/4/85) Note 1-

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EVELYN ZERMAN and ERNEST R. ZERMAN, Pro Se, petition for a Writ of Certiorari to review the decisions of United States Court of Appeals for the Second Circuit affirming the dismissal of three complaints and three appeals to 2nd Circuit based thereon, Numbers 83-7441, 84-7535 and 84-7373.

OPINIONS BELOW

June 1, 1984 opinion of 2nd Circuit is annexed as appendix "A". Rehearing denied 3/25/85, annexed as page 13 addition to Judge Sofaer's(S.D.N.Y.)opinion, app."B".

Jan. 31, 1985 opinion, 84-7535, not reported, involved similar issues e.g., 15USC 77c(a)(2), 77q, 78g, Margined Government U.S.Securities and arbitration award. On May 1, 1985, 2nd Circuit under Rule 38 ORDERED ATTORNEY'S FEES,$7937-NYSE. App."C".

Dec. 13, 1984, 2nd Cir. 84-7373,involving similar issues e.g., 15 USC 77c(a)(2),

77q, 78g, Margined U.S.Government securities, arbitration award, and award of $2500, Two Thousand Five Hundred Dollars to defendant Bache as damages under Rule 38. Appendix "D" is S.D.N.Y. opinion holding SEC Reg.240.15c2-2 as FRIVOLOUS.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

STATUTORY PROVISIONS INVOLVED

United States Constitution-Amendment V:

> 'Nor shall any person..be deprived of.. property without due process of law.. or Denied The Equal Protection of Law'

United States Constitution-Amendment VII:

> 'In suits at common law..the right of Trial By Jury shall be preserved'

United States Constitution-Amendment X:

> 'The powers not delegated to the United States by the Constitution..are reserved to the States, or to the people'

P.L.91-508(1970)-deals with law enforcement

15 U.S.C. 77c(a)(2), 77q, 78g. 9 USC 1-14.

17 CFR SEC Reg. 240.15c2-2(12/28/83) and Securities Exchange Act Release No. 15984 (7/2/79).

STATEMENT OF THE CASE

Prefatorily, there is nothing in the Constitution, laws of the U.S., Court Rules or procedures or ethical or moral reasons, prohibiting a husband from voluntarily assisting a pro se complainant, his wife, in the prosecution of her case or appeal, and such husbands assistance SHOULD NOT BE WEIGHTED against her, as was done unjusty, unfairly and prejudicially by lower Courts.

Diversity of Citizenship Jurisdiction is a fact and jury trials demanded in all cases.

All the transactions at Dean Witter Reynolds (herein 'DWR') and at Prudential-Bache (herein 'Bache') were in MARGIN GOVERNMENT SECURITIES ACCOUNTS at Brokers Hallandale, Florida branch offices, where Usury ceiling is 18%.

On 4/12/83, Judge Sofaer (S.D.N.Y.) made an erroneous decision (Appendix "B"), contrary to facts, dismissing Evelyn's claims as either legally insufficient or failing to allege facts with sufficient particular-

Judge Sofaer's bias decision (B.2~~4~~6) states:

> "Plaintiff has set forth facts which she claims establish three instances of fraud....Finally, plaintiff contends that defendants sold her the GNMA at price of $98-¼ when, in fact, the security listed at the date of sale at a price between $89 and $91. Id. ¶ 34 & Ex.H.

Below is Exhibit "H" of complaint which shows trade date April 9, AS OF MARCH 20, for this New Issue GNMA, I know of no law, SEC regulation or custom whereby you can trade a security on April 9, 1981 as of March 20, 1981 without issuing a confirmation of the sale within 5 days of 3/20/81.

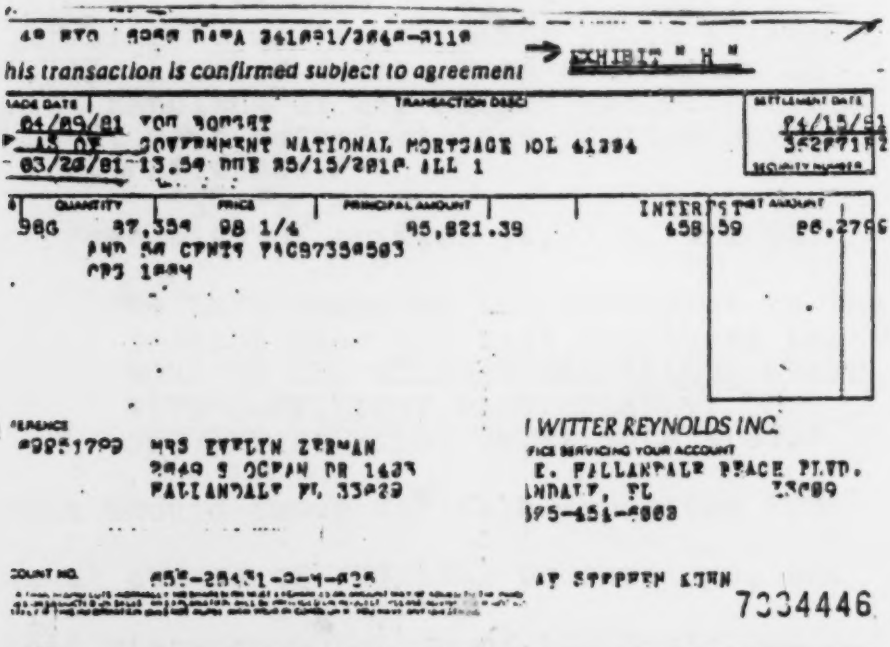

EXHIBIT " H "

his transaction is confirmed subject to agreement

TRADE DATE	TRANSACTION DESC	SETTLEMENT DATE
04/09/81 YOU BOUGHT		04/15/81
15 GX	GOVERNMENT NATIONAL MORTGAGE POL 61394	352771
03/20/81 13.50 DUE 05/15/2010 ALL 1		SECURITY NUMBER

QUANTITY	PRICE	PRINCIPAL AMOUNT	INTEREST	NET AMOUNT
986	97.359 98 1/4	95,821.39	458.59	96.279

PMT SR CPNTY 71C97359503
CPN 13.5

REFERENCE
#9851709 MRS EVELYN ZERMAN
2940 S OCEAN DR 1407
FALLANDALE FL 33029

WITTER REYNOLDS INC.
OFFICE SERVICING YOUR ACCOUNT
E. FALLANDALE BEACH BLVD.
LNDALE, FL 33009
305-454-8868

ACCOUNT NO. 85[illegible]-2841-0-4-826 AT STEPHEN KUHN

7034446

The dismissal of the complaint was un-

Judge Sofaer flagrantly departed from accepted and usual course of judicial proceedings when he allowed defendants' REBUTTAL AFFIDAVITS (R12(b)(6). Opinion(B.3):

> 'Because plaintiff has made no such showing, but has made only broad, conclusory allegations of scienter, her fraud claims are dismissed. DEFENDANTS HAVE SUCCESSFULLY REBUTTED plaintiff's final claim of fraud in an affidavit explaining the pricing procedures for GNMA's. Affidavit of Joanne La Rocca (Apr.6, 1983)'. (Zermans' note-Sofaer's judgment for defendants is 4/12/83, 6 days after Judge received affidavit.)

On 6/1/84,(A.1-4) 2nd Circuit,Affirmed:

' Appeal from a judgment in U.S.D.C. for S.D.N.Y. (Abraham D. Sofaer, Judge) dismissing Zerman's complaint which alleged violations of federal and state laws in the handling of her margin securities account with defendant Dean Witter Reynolds Inc. Affirmed.

Page 4149 of opinion (A.3) of 6/1/84:

> 'We have examined the complaint in the instant case and have concluded that NONE OF HER ALLEGATIONS ALLEGE FRAUD WITH SUFFICIENT PARTICULARITY TO SURVIVE SCRUTINY UNDER RULE 9(b).'

Writ should issue for this departure from usual course of judicial proceedings, and bald misrepresentation of the truth and misinterpretation of facts.

Judge Sofaer's opinion, page 7 (B. 3):

" Plaintiff claims that defendants violated 12(2) of Securities Act, 15 USC 77 1(2), by making fraudulent omissions in sale of securities. The securities at issue, U.S.Treasury Bonds and GNMA certificates... are exempt securities under 3(a)(2)..77c."

Sofaer's opinion, page 11 ------:

" consumers to refrain from purchasing securities at unlawful margins, 15 U. S.C.78g(f)(1976), provided further circumstantial proof that Congress had no intention to provide a private right of action against broker/dealers"

The records of the Second Circuit Court of Appeals, WHICH ZERMAN REQUESTS BE OBTAINED TO BETTER UNDERSTAND THIS PETITION, will further show in connection with their Nos. 83-7441, 84-7535 and 84-7373:

On 11-1-83, S.D.N.Y. No. 83 Civ.7980, Ernest R. Zerman, pro se, filed a securities fraud and margin violation action against Bache and New York Stock Exchange for their holding an Arbitration hearing, contrary to Wilko v Swan, on Bache's Rule 13 COUNTERCLAIM only concerning U.S. Gov't Margined Securities in Zerman's Bache account. No. 83 Civ 7980 dismissed on basis

of Res Judicata and Collateral Estoppel of Arbitration Award judgment in case No.80 Civ 3570(Weinfeld).

On 1/31/85 under 2nd Circuit No. 7535, S.D.N.Y. dismissal on basis of Res Judicata and Collateral Estoppel of default ARBITRATION AWARD was affirmed. Rehearing on No. 84-7535 was denied on 3/25/85.

On 6/4/80, Ernest R. Zerman, pro se, filed a securities fraud and margin violation action, No. 80 Civ.3570(Weinfeld), for Bache's violating the securities laws in handling of his U.S.Government Margin Securities Account. In this case, Bache filed a COUNTERCLAIM under Rule 13 which only concerned 6 U.S.Treasury Bonds. Judge Weinfeld, over Zerman's objection that Wilko v Swan applied to Bache's COUNTERCLAIM involving only 6 U.S.Treasury Bonds posted by Zerman as Margin, Ordered and approved an ARBITRATION AWARD under 9 USC9, on 3/7/83.

On 2/22/84, within less than a year of

3/7/83 Zerman filed a Motion under 60(b) by virtue of enactment effective 12/28/83 of SEC Rule 240.15c2-2 confirming Wilko v Swan doctrine. Annexed appendix "D" is Judge Weinfeld's ORDER of 3/31/84 holding SEC Rule 240.15c2-2 as frivolous.

On 12/13/84, 2nd Circuit No.84-7373, 2nd Circuit affirmed Weinfeld's dismissal and in addition, under Rule 38, levied damages-----of $2500 against Zerman for taking a frivolous appeal based on 17CFR 240.15c2-2.

All three cases, all from the Second Circuit, Nos.83-7741, 84-7535 and 84-7373 involve identical and closely related issues.

Miami Herald 3/7/85 article on issue:

ay lose millions Fr

Miami Herald 3/7/85 -Bache D.

As investigators pored over the financial records of the Fort Lauderdale securities firm closed Monday by the Securities and Exchange Commission, a Texas city postponed a bond sale; the state of Ohio issued a statement to reassure worried savings and loan customers; a congressman called for regulation of the unregulated government securities industry and city finance directors across the natiin who invested in ESM tried to discover how much their municipalities and counties could lose.

"We've never seen anything of this scale before," said Charles Harper, director of the SEC Miami office. "This could be bigger than Drysdale." That New York government securities dealer collapsed in 1982, incurring $300 million in losses.

Two New York companies, Bradford Trust Co. and Security Pacific, did not hold any securities as collateral for cities as many

REASONS FOR GRANTING WRIT-QUESTION I

Introductorily, this Court cannot ignore the changing ecomic conditions of the nation, e.g., the tremendous growth of public debt, represented by U.S.Treasuries of $1,500,000,000 and deficit growing $200,000-000 a year.

The legislative history of the 1933 and 1934 Securities Acts makes clear that Congress was primarily concerned with transactions in securities that are traded in a public market. In United Housing Foundation,Inc. v. Forman, 421 U.S.837 (1975):

> "The primary purpose of the Acts of 1933 and 1934 was to eliminate serious abuses in a largely unregulated securities market."

Lack of control over the tremendous U.S.Government securities market is because of 15 USC 77c(a)(2) and lack of control by SEC was a direct cause of Zermans' damage and the Drysdale and ESM debacles. Also, investors in U.S.Bonds are entitled to 'EQUAL PROTECTION' of Acts,

similar to investors in Corporate Bonds.

The Writ should issue, as it is a violation of Zermans' 5th Amendment rights, TO BE DENIED THE EQUAL PROTECTION OF THE SECURITIES LAWS OF 1933 and 1934 and SEC RULES, by the continued enforcement by the Courts of 15 USC 77c(a)(2), which now because of changing securities market conditions, unconstitutionally, denies Zermans the same protection provided purchasers and investors of Corporate Bonds. There is now no rational basis for such distinction between investors in U.S.Bonds and investors in Corporate Bonds.

The exemption of U.S.Government Bonds might have been a reasonable and rational classification in 1933 and 1934, and a proper exercise of Congress police power with regard to Interstate Commerce, as there was almost no fluctuation in U.S.Bonds, 1/32 of a point at the most, Now however, U.S. Bonds can change a point or more in one day. This Court should not allow 1929 to/ repeat.

The case of Plyler v Doe,457 U.S. 202,216:

> "The Equal Protection Clause directs that "all persons similarly circumstanced shall be treated alike."F. S.Royster Guano Co. v Virginia,253 US 412(1920).... In applying the Equal Protection Clause to most forms of state(here we have Congress enactment of 15 USC 77c(a)(2) action, we thus seek only the assurance that the CLASSIFICATION AT ISSUE BEARS SOME FAIR RELATIONSHIP TO A LEGITIMATE PUBLIC PURPOSE.

There is no longer a rational basis nor a legitimate public purpose to exempt the tremendous U.S.Government Bond market from control and regulation.

There is no longer a rational basis or a public purpose to be served, by not affording to U.S.Government securities investors, who are similarly circumstanced the SAME AND EQUAL protection afforded to investors of CORPORATE SECURITIES AND BONDS.

The same protection of the Securities laws and Securities & Exchange Commission Rules should be afforded to both U.S.Governments and Corporate Bonds.

REASONS FOR GRANTING WRIT QUESTIONS II, IV AND V.

The ANTI-FRAUD sections of the Securities Act of 1933, 15 USC 77q, at issue on this petition for Writ of Certiorari; the ANTI-FRAUD section of the Exchange Act of 1934, 15 USC 78j(b); and ANTI-FRAUD section of the Commodity Exchange Act, 7 USC 6(b); are all very similar in language and purpose, which is to protect the investor from fraudulent statements and acts by brokers in connection with the purchase and sale of securities.

The complaints in all three cases involve Section 17(a) of the 1933 Act, 15 USC 77q. The importance of having the law settled, as there is great CONFLICT in the Circuits, on private suits not only under 15 USC 77q but also 15 USC 78g, is beyond dispute, and this Court as FINAL ARBITER as provided for under the Constitution, has an obligation to the investors of the nation, has an obligaton to settle the questions once and for all time.

The lower court's decisions, that no private right of action exists under 77q and 78g, is in DIRECT CONFLICT with the applicable decisions in Merrill Lynch v. Curran, 456 U.S. 353, holding:

> " Although the consensus of opinion concerning the existence of a private cause of action under the CEA was neither as old nor as overwhelming as the consensus concerning 10(b),it was equally uniform and well understood." ,

and, Herman & MacLean v. Huddleston, 103 S.Ct. 683(1983) confirmed a private right of action under 15 USC 78j(b) which follows the exact language of 15 USC 77q.

There is great conflict in Circuits on question of private suits under 15 USC 77q. Kirshner v. United States, 603 F.2d, upholds private suits under 15 USC 77q.

Writ should issue pertaining to question V., because Circuit Courts contrary to Curran and Huddleston, reject such suits for 78g and 77q violations by brokers.

Since its inception, the courts have construed the SEA 1934, 15 USC 78g, as con-

tinuing to afford this remedy, which was recognized by most Circuits, i.e., Landry v. Hemphill, 473 F.2d 365(1st 1973), Pearlstein v. Scudder&German,429 F.2d 1136 (2nd Cir. 1970).

P.L.91-508 (1970) added Subsection (f) to Section 7 of SEA of 1934. Under the general description of the Bill and NEED for legislation is following statement:

" THE BILL DEALS WITH TWO MAJOR PROBLEM AREAS IN LAW ENFORCEMENT. "

As both Curran and Huddleston hold, it is the intent of Congress which determines whether private suits exist under the act.

The central inquiry in deciding whether a private remedy may be implied is congressional intent. Transamerica Mort. Advisors v. Lewis, 444 U.S. 11,23 (1979). But that inquiry differs depending on whether court considers new legislation or, as in the case of SEA 1934, legislation that Congress ADDED TO following enactment. As stated in Curran:"When Congress enacts new legisla-

"tion, the question is whether Congress intended to create a private remedy as a supplement to the expressed enforcement provisions of the statute."

".. when Congress acts in a statutory context in which an implied remedy has already been recognized by the courts...the inquiry logically is different. Congress need not have intended to create a new remedy, since one already existed; THE QUESTION IS WHETHER CONGRESS INTENDED TO PRESERVE THE PREEXISTING REMEDY."

To determine legislative intent, it is important to go to the legislative history.

Volume on Laws Legislative History-91st Congress-2nd Session 1970, Purpose p.4409:

" Part of the reason why section 7 was originally enacted in its present form may have been a concern OVER PUTTING THE SMALL INVESTOR AT RISK as to whether his broker or lender was complying with the regulation. THE AMENDMENT HAS BEEN CAREFULLY DRAWN TO AVOID THIS RESULT.

Also showing the intent of Congress to preserve the preexisting private remedy for Margin violations by brokers, is West Vol. Title 15 USCA 77a to 78i, p. 730:

" VALIDITY OF RULES AND REGULATIONS Section 301(b) of Pub.L.91-508 provided that:"The amendment made by subsection (a) of this section(adding subsec(f) of

> "this section) DOES NOT AFFECT THE CONTINUING VALIDITY OF ANY RULE OR REGULATION UNDER SECTION 7 OF THE SECURITIES EXCHANGE ACT OF 1934 in effect prior to the effective date of the amendment.

The implied right of action under 7c, MARGIN violations, stood as part of the "contemporary legal context"in which Congress acted in 1970 and 1975, when they amended the law. And the fact that the 1970 addition of 7(f) and 1975 amendments "left intact statutory provisions under which the federal courts had implied a cause of action, IS ITSELF EVIDENCE THAT CONGRESS AFFIRMATIVELY INTENDED TO PRESERVE REMEDY.

The Curran rationale, which was reaffirmed in Huddleston, applies here to 7c.

Although not going into detail here, it is evident that the private remedy under 77q and 78g, conforms with the four part test in Cort v. Ash, 422 U.S. 66. However, Zerman submits, Curran should be followed in that respect, 102 S.Ct. at 1844:

> "In view of our construction of intent of Congress..no need "trudge through all four factors..".

Writ should issue as 2nd Circuit has decided a federal question, Private Suits under 15 USC 78g, Margin violations, in CONFLICT with applicable decisions of Merrill Lynch v Curran and Herman & MacLean v Huddleston.

Since its inception, the courts have construed the 1934 Act, 15 USC 78g as affording the private remedy.

A 1970 Amendment added subsection (f), by P.L.91-508 a law enforcement statute.

The implied right of action under 7(c), 15 USC 78g(Margin) stood as part of the "contemporary legal context" in which Congress acted in 1970 and 1975 when they amended the law. And the fact that the 1970 addition of 7(f) and 1975 amendment "left intact the statutory provisions under which the federal courts had implied a cause of action, is itself evidence that Congress AFFIRMATIVELY INTENDED TO PRESERVE THAT REMEDY. Curran rationale applies to 7(c).

REASONS FOR GRANTING WRIT-QUESTION III

Lower Court invaded Zermans 10th Amendment rights under the Constitution, since Zerman as a Florida citizen is entitled to benefit of Florida's Usury laws which are applicable to securities loan transactions entered into and consumated at Dean Witter Reynolds' branch office in Hallandale, Florida where Zerman is a permanent resident.

To hold otherwise is a departure from Erie R. Co. v. Tompkins, 304 U.S. 64,78:

> "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the STATE."

Section 175 of 16 C.J.S., page 901:

Cf. East N.Y.Saving BK. v Hahn, 66 S.Ct. 69:

> "The police power of the state extends to all great public needs,... and the protection of all property within the state and the EXECUTION OF ALL CONTRACTS AFFECTING SUCH MATTERS.

REASONS FOR GRANTING WRIT-QUESTION VI.

Prefatorily, it was manifest injustice in cases Nos. 7535 and 7373, under Rule 38 to award $11,000 Attorney Fees and $2500 in damages, as appeals were not FRIVOLOUS.

The Arbitration Act, 9 USC 1-14, in so far as it forces a person to arbitrate a dispute, involuntarily, is an unconstitutional abrogation of Zermans' rights under 7th and 5th Amendments, as well as 'Access to the Courts' guaranteed by 1st Amendment. Also violates separation of powers between the judicial and legislative branches of the government.

Expediency of relieving the federal case load, has no place in the administration of Equal Justice to all, which is a fundamental right guaranteed by our system of Government.

The case holding of Dean Witter Reynolds v. Byrd, No.83-1708 (3-4-85) cannot be applied to a forcing of Arbitration, under III:

> "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district court shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed. PP.3-4.

Congress does not have the constitutional power to mandate a court not to exercise discretion.

CONCLUSION: For all the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Evelyn Zerman

Evelyn Zerman Pro Se

Ernest R. Zerman

Ernest R. Zerman Pro Se
2049 Ocean Dr.#1403
Hallandale, Florida 33009
(305) 456-1404

CERTIFICATION OF SERVICE

I, Ernest R. Zerman, hereby Certify that on 6/21/85, I deposited copies of the foregoing Petition, in U.S.Mail Box in Hallandale, Florida, with 1st class postage prepaid and properly addressed;

To: John Peloso,Esq., atty for Dean Witter Reynolds, Two World Trade Center, New York, New York 10048;

To: Marvin Schwartz,Esq., atty for Prudential-Bache, 125 Broad Street, New York, New York 10004; and

To: Russell E. Brooks,Esq., atty for New York Stock Exchange, Inc., One Chase Manhattan Plaza, New York, New York 10005

Ernest R. Zerman

Ernest R. Zerman